

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

STEVEN SALAITA,	)	
	)	Case No. 15 C 924
Plaintiff,	)	
	)	Hon. Harry D. Leinenweber,
v.	)	District Judge
	)	
CHRISTOPHER KENNEDY, <i>et al.</i> ,	)	
	)	JURY TRIAL DEMANDED
Defendants.	)	

**MOTION FOR ENTRY OF AN ORDER TO PRESERVE EVIDENCE**

Plaintiff STEVEN SALAITA, by his attorneys LOEVY & LOEVY and the CENTER FOR CONSTITUTIONAL RIGHTS, respectfully moves for an order requiring the Defendants to preserve evidence. In support, Plaintiff states as follows:

1. Professor Salaita alleges in this lawsuit that the Defendants terminated his tenured professorship at the University of Illinois at Urbana-Champaign, in violation of his constitutional rights and rights protected by state law. Doc. No. 1.

2. As explained in detail in Plaintiff's Motion for Leave to File A First Amended Complaint, filed earlier today, new evidence has come to light demonstrating that Defendants used personal email accounts rather than University email addresses when communicating about the subject matter of this case in order to evade the University's email preservation and retention obligations, and that at least Defendant Wise destroyed emails relevant to Professor Salaita's case. *See* Doc. No. 62. These efforts to conceal and destroy communications relevant to this lawsuit have taken place with full knowledge that this evidence might be relevant to this case.

*See id.*

3. Recognizing that communications and other evidence solely in the possession of the Defendants would be essential to proving Plaintiff's civil case, Plaintiff sent a litigation hold letter to Defendants on April 16, 2015, reminding the Defendants of their duty to preserve evidence. The letter explained that the Defendants had been on notice since at least August 2014 of their duty to preserve evidence relating to this lawsuit, and it asked them to make Plaintiff aware of any potential problem regarding preservation of evidence, including problems relating to electronically stored information. *See* Exhibit A. The Defendants did not respond to that letter in any way that suggested that there would be any problem preserving evidence relevant to this case.

4. Defendants' attempts to destroy or hide communications regarding Professor Salaita raises concerns that important evidence relevant to this case has disappeared or is in danger of disappearing. There is no question that, even without a court order, parties to civil litigation may not destroy evidence. *See, e.g., Lekkas v. Mitsubishi Motors Corp.*, 2002 WL 31163722, at \*3 (N.D. Ill. Sep. 26, 2002) (collecting cases). There is similarly no question that Federal Rules of Civil Procedure empower this Court to order the preservation of evidence. *See, e.g., Treppel v. Biolvail Corp.*, 249 F.R.D. 111, 119-20 (S.D.N.Y. 2008) (collecting cases).

5. The conduct recently revealed is likely to warrant the imposition of sanctions against Defendants, including possible adverse inference instructions or monetary sanctions. But the exact type and extent of sanctions that are appropriate will depend in part on additional discovery to understand the scope and content of evidence destroyed and the potentially broader efforts of the Defendants to destroy or hide communications.

6. Because the evidence currently in Defendants' possession, including their communications about Professor Salaita, will be critical to Plaintiff's prosecution of his civil

case and in light of Defendant's efforts to conceal this evidence, Plaintiff respectfully submits that an order to preserve evidence is warranted in this case.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order directing the Defendants and their employees and agents to preserve all physical, documentary, or other evidence in their possession, custody, or control relating to the allegations at issue in this case, including all email communications sent or received by the Defendants and their colleagues, whether those communications are stored in University email accounts, in personal email accounts, or in some other location.

RESPECTFULLY SUBMITTED,

/s/ Steven Art  
*One of Plaintiff's Attorneys*

Maria LaHood (*pro hac vice*)  
Baher Azmy (*pro hac vice*)  
Omar Shakir (*pro hac vice*)  
THE CENTER FOR CONSTITUTIONAL RIGHTS  
666 Broadway  
7th Floor  
New York, NY 10012  
Phone: 212-614-6464

Jon Loevy  
Arthur Loevy  
Anand Swaminathan  
Gretchen Helfrich  
Steven Art  
LOEVY & LOEVY  
312 N. May St., Suite 100  
Chicago, IL 60604  
Phone: 312-243-5900

**CERTIFICATE OF SERVICE**

I, Anand Swaminathan, an attorney, certify that on August 25, 2015, I filed the foregoing Motion for Entry of an Order to Preserve Evidence using the Court's CM/ECF system, which effected service on all counsel of record.

/s/ Anand Swaminathan

# EXHIBIT A

Russell Ainsworth  
Steve Art  
Ruth Z. Brown  
Roshna Bala Keen  
Vincenzo Field  
Julie Goodwin  
Sarah C. Grady  
Gayle Horn  
Michael Kanovitz  
Heather Lewis Donnell  
Samantha Liskow  
Arthur Loevy

LOEVY & LOEVY  
ATTORNEYS AT LAW

312 N. May Street  
Suite 100  
Chicago, Illinois 60607

Jon Loevy  
Debra Loevy-Reyes  
Elizabeth Mazur  
David B. Owens  
Scott Rauscher  
Rachel Steinback  
Anand Swaminathan  
Tara Thompson  
Matthew V. Topic  
Cindy Tsai  
Daniel Twetten  
Elizabeth Wang

Telephone 312.243.5900  
Facsimile 312.243.5902

Website [www.loevy.com](http://www.loevy.com)  
Email [anand@loevy.com](mailto:anand@loevy.com)

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April 16, 2015

By Email

Chris Wilson  
Perkins Coie  
131 South Dearborn Street  
Chicago, IL 60603

Re: *Salaita v. Kennedy, et al.*, 15 Civ. 924 (N.D. Ill.)

Dear Chris:

I write with regard to your clients' obligations to preserve evidence in anticipation of litigation.

The University and the Individual Defendants have been well-aware of potential litigation surrounding Professor Salaita's dismissal and denial of appointment since at least August 2014. Indeed, both parties had retained counsel and were engaged in settlement discussions during that time, and FOIA documents reveal that the Office of University Counsel was involved as early as July 25, 2014.

This letter serves as a reminder and advises your clients of their continuing obligation to preserve and maintain all information that is related to the above-captioned matter. We assume the University has already taken steps to preserve and maintain all documents related to any of the claims, defenses, or damages in the above-captioned matter. If it has not done so, please immediately take steps to do so and inform us of this lapse.

For these purposes, please be advised that the University and each of the Individual Defendants should be preserving all documents and electronically stored information, including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained. Further, the documents that University should take steps to preserve include hard copy documents and electronically stored information that are nominally held by University employees or agents at their homes or within their personal email or social media accounts. This information may be stored on computer workstations (including any computer used outside of the University's offices), personal laptop computers, networked servers, removable media, smart phones, tablets, or other handheld devices. In addition, if electronically stored information (including electronic mail) that is "deleted" may become inaccessible after any period of time, all measures should be taken to preserve that information immediately.

April 16, 2015  
Page 2 of 2

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to be 'AS' with a large flourish extending to the right.

Anand Swaminathan